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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-first session

SUMMARY RECORD OF THE 550th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 23 March 1992, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.50 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the thirty-first session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space.

STATEMENT BY THE CHAIRMAN

2. The CHAIRMAN said that, since the preceding session, the world had witnessed dramatic changes and developments. He was nevertheless confident that the spirit of accommodation, respect and compromise which had guided the Subcommittee's work for a long time, would remain unchanged and that the current session would be pleasant and fruitful.

PARTICIPATION OF NON-MEMBER STATES

3. The CHAIRMAN said that he had received a communication from Greece requesting participation in the Subcommittee's meetings. Inasmuch as the granting of observer status was a prerogative of the Committee on the Peaceful Uses of Outer Space, the Subcommittee did not need to take a formal decision on the matter. He nevertheless suggested that, in accordance with the practice followed in the past when non-member States had asked to take part in the Subcommittee's meetings, the representatives of Greece might attend formal meetings of the Subcommittee and might direct to the Chair a request for the floor if they wished to make a statement.

4. It was so decided.

PROGRAMME OF WORK

5. The CHAIRMAN drew attention to General Assembly resolution 46/45 which was entitled "International cooperation in the peaceful uses of outer space" and in which the General Assembly had decided that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, and acting through its working groups, should:

(a) Continue the elaboration of draft principles relevant to the use of nuclear power sources in outer space with the aim of finalizing the draft set of principles at the current session;

(b) Continue the consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit, without prejudice to the role of the International Telecommunication Union; and

(c) Continue the consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

ADOPTION OF THE PROVISIONAL AGENDA (A/AC.105/C.2/L.186)

6. The provisional agenda (A/AC.105/C.2/L.186) was adopted.

ESTABLISHMENT AND CHAIRMANSHIP OF WORKING GROUPS

7. The CHAIRMAN said that, in accordance with the General Assembly's recommendations, working groups open to all members of the Subcommittee had to be established for agenda item 3 (Nuclear power sources), agenda item 4 (Definition of outer space and the geostationary orbit) and agenda item 5 (Outer space benefits). He therefore suggested that the Subcommittee should re-establish its three working groups on those agenda items.

8. It was so decided.

9. The CHAIRMAN said that Mr. Winkler (Austria), who had chaired the Working Group on Nuclear Power Sources for the last four sessions, would be unable to attend the current session, since he had received an important new assignment. He therefore suggested that Mr. Franz Cede (Austria) should be appointed Chairman of the Working Group, which he chaired from 1984 to 1987.

10. It was so decided.

11. The CHAIRMAN suggested that the Subcommittee should reappoint Mr. Zawels (Argentina) as Chairman of the Working Group on the Definition of Outer Space and the Utilization of the Geostationary Orbit.

12. It was so decided.

13. The CHAIRMAN suggested that Mr. Gonzalez (Chile) should be reappointed Chairman of the Working Group on Outer Space Benefits.

14. It was so decided.

SCHEDULE OF MEETINGS AND UTILIZATION OF CONFERENCE SERVICES

15. The CHAIRMAN said that, if he heard no objection, he would take it that the Subcommittee adopted the schedule of meetings contained in document A/AC.105/C.2/L.186.

16. It was so decided.

17. The CHAIRMAN said that the General Assembly had requested the Committee on Conferences to oversee the utilization of Conference Services by the various deliberative bodies and to ensure that optimum use was made of the services available to each body. He had received a letter from the Chairman of the Committee on Conferences dated 30 January 1992 concerning the utilization of conference resources by the Subcommittee; copies of the letter were available to participants.

18. For a number of years in the past, the Subcommittee had used less than 75 per cent of available conference resources at each session. That percentage was the "minimum level of efficiency" set by the Committee on Conferences. In the past two years, however, the Subcommittee had maintained that required level of efficiency. That result had been achieved through the adoption of measures referred to in the Subcommittee's report on its preceding session (A/CN.105/484, para. 12). The Subcommittee had agreed that a similar organization of work would be adopted for the present session (A/AC.105/484, para. 14) and that decision had been endorsed by the Committee on the Peaceful Uses of Outer Space at its thirty-fourth session (A/46/20, para. 157). The Committee's recommendations had then been endorsed by the General Assembly in operative paragraph 5 of its resolution 46/45.

19. He therefore suggested the following arrangements:

(a) The Subcommittee and its Working Groups should begin their meetings punctually at the scheduled time, even if there was no quorum (14 members);

(b) The Conference Services Division should be notified as early as possible whenever it was anticipated that any of the services usually provided was not going to be required;

(c) Informal consultations should not interrupt the work of the Subcommittee or its Working Groups;

(d) The general rule for annexing documents to the Subcommittee's report should be that any document would be annexed, if at all, only once;

(e) The Subcommittee should not hold plenary meetings in the afternoons when agenda items 3, 4 and 5 were being considered. Working Groups on those items should meet instead;

(f) Delegations wishing to speak at the Subcommittee's next plenary meeting should inform the Chairman before the adjournment of the previous plenary meeting; if no such information was received by the Chairman, the next plenary meeting would be cancelled and a working group held instead.

(g) The Subcommittee and its Working Groups should try to schedule in advance informal consultations at which conference services would not be used.

20. Measures (e) and (f) were aimed at reducing the number of plenary meetings and holding meetings of Working Groups in order to save resources used for the preparation of summary records. As to measure (g), he suggested that six formal afternoon meetings, two for each substantive agenda item, should not be scheduled and that informal consultations should be planned instead.

21. If he heard no objection, he would take it that the Subcommittee agreed to adopt his suggestions.

22. It was so decided.

GENERAL EXCHANGE OF VIEWS

23. Mr. MARIN BOSCH (Mexico) recalled that, in its resolution 46/45, the General Assembly had recommended that the Committee on the Peaceful Uses of Outer Space and its Scientific and Technical Subcommittee should devote at least one session to commemorating the International Space Year. His delegation was, however, of the opinion that the Legal Subcommittee should also take part in that celebration, particularly since 1992 marked the twenty-fifth anniversary of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. That anniversary should be an opportunity to reaffirm the international community's commitment to the objectives of the 1967 Treaty and to the progressive development of outer space law. The 1967 Treaty had been a product of the cold war and, in particular, of the competition between the two main military powers for pre-eminence in space. It had also been a response to the international community's concern to prevent outer space from becoming the scene of military confrontation. With the end of the cold war, the Legal Subcommittee could now continue with even greater determination to carry out the task of drafting rules to govern the growing number of human activities in outer space and ensuring their universal implementation.

24. On 11 October 1991, the Government of Mexico had deposited with the Secretary-General of the United Nations its instrument of accession to the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. Mexico was thus a party to the five main instruments on outer space and it hoped that all Member States of the United Nations would accede to those instruments, regardless of the stage they had reached in their outer space activities. The observance of outer space law required respect for existing rules, whether multilateral or bilateral, particularly by the main outer space powers. His delegation was therefore deeply concerned about the fact that, under the Strategic Defence Initiative, consideration was being given to the possibility of repealing agreements, such as the 1972 Treaty on the Limitation of Anti-Ballistic Missile Systems, which had previously served to maintain a strategic balance between the main military powers.

25. The ad hoc Committee on Prevention of the Arms Race in Outer Space of the Conference on Disarmament had resumed its work in Geneva only two weeks previously. In the seven years since its establishment, the ad hoc Committee had not achieved any concrete results. His delegation therefore proposed again, as it had two years previously, that, when the Legal Subcommittee met in Geneva, machinery should be established for cooperation between the Committee on the Peaceful Uses of Outer Space and its two Subcommittees and the ad hoc Committee. Such cooperation should not be very difficult to establish, since 32 of the 53 members of the Committee were also members of the Conference on Disarmament. Moreover, the Vice-Chairman of the Committee and the Chairman of the ad hoc Committee were both members of the Romanian delegation. In addition, the same Governments were always represented in the Committee and its Subcommittees and in the Conference on Disarmament. Bureaucratic considerations should not be allowed to hamper joint efforts to guarantee the use of outer space exclusively for peaceful purposes. As a

first step, the Legal Subcommittee might therefore invite the Chairman of the ad hoc Committee to make a statement on the current status of the discussions in the Conference on Disarmament.

26. His delegation noted with regret that, in the past two years, there had been no change in the Subcommittee's programme of work. It had hoped that a final agreement would have been reached on the principles relevant to the use of nuclear power sources in outer space, which had been under consideration since 1986. That would have enabled the Subcommittee to start work on new tasks.

27. The Subcommittee's area of activity could be as vast as outer space itself. However, human activities in outer space were already beginning to meet with vestiges of the past: space debris was a threat to future undertakings and, sooner or later, it would have to be discussed by the Subcommittee. Paragraphs 24 to 26 of General Assembly resolution 46/45 referred to that important question, indicating that the Committee should hold an in-depth discussion of that subject "in the future". That was rather surprising, particularly since a 1990 publication entitled "Orbiting Debris: A Space Environmental Problem - Background Paper" by the Office of Technological Evaluation of the United States Congress, stressed that the participation of all nations with space activities was required for the consideration of the problem and that, unless prompt action was taken to reduce space debris, it might sharply restrict the use of certain orbits in coming decades. That paper also stated that an international agreement or treaty dealing specifically with space debris might be necessary and that a number of legal problems would therefore have to be solved, including the definition of space debris and questions relating to jurisdictional control over, and responsibility for damage caused by, space debris. In his delegation's view, the Committee and its Subcommittees should start to consider the technical, legal and political questions relating to space debris in order to prevent it from hampering mankind's activities in outer space.

28. Mr. BOYER (France) said that his Government was opposed to any attempt to link the work of the Committee on the Peaceful Uses of Outer Space and its Subcommittees with that of the Conference on Disarmament. Those bodies were quite separate and the former had no time to discuss items under consideration by the latter.

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (agenda item 5) (A/AC.105/484, A/AC.105/C.2/L.182, A/46/20, A/AC.105/C.2/15 and Add.1-13; A/AC.105/C.2/16 and Add.1-10; A/AC.105/C.2/L.187)

29. The CHAIRMAN said that chapter III of the report of the Subcommittee on the work of its thirtieth session (A/AC.105/484) related to the agenda item under consideration. The report of the Chairman of the Working Group on that agenda item was contained in annex III to that report. The working paper (A/AC.105/C.2/L.182) submitted by a number of delegations at the conclusion of the Subcommittee's thirtieth session, for consideration at the current session, was contained in annex IV.B to that report.

30. The Subcommittee's work on agenda item 5 had been reviewed at the thirty-fourth session of the Committee on the Peaceful Uses of Outer Space in May and June 1991. The Committee's report was contained in document A/46/20, paragraphs 126 to 137 and paragraph 151 (c) of which were particularly relevant.

31. In paragraph 4 of resolution 46/45, the General Assembly had recommended that, at its thirty-first session, the Legal Subcommittee taking into account the concerns of all countries, particularly those of developing countries, should continue, through its working group, to consider agenda item 5.

32. In 1988, the Secretary-General had addressed a note verbale to Member States inviting them to submit their views on the priority to be given to specific subjects under agenda item 5 and to provide information on their national legal frameworks, if any, relating to the development of the application of the principle embodied in article I of the 1967 Outer Space Treaty. That request had been reissued in 1989 and 1990. Replies from Member States to that note verbale were contained in document A/AC.105/C.2/15 and Add.1-13. In addition, in 1989, the Secretary-General had addressed a note verbale to Member States inviting them to submit their views on the subject of international agreements entered into by Member States which were relevant to that principle. That request had been reissued in 1990. Replies to the note verbale from Member States were contained in document A/AC.105/C.2/16 and Add.1-10.

33. At the Subcommittee's thirtieth session in 1991, the Chairman of the Working Group on agenda item 5 had been requested to prepare for the thirty-first session of the Subcommittee a paper summarizing, in an analytical manner, the views and information contained in the two above-mentioned documents. That paper was now before the Subcommittee (A/AC.105/C.2/L.187).

34. Mr. GONZALEZ (Chile) said that, at its current session, the Subcommittee should examine a number of issues which were of particular relevance to the developing countries and were also in keeping with the spirit of International Space Year. It should start by establishing a closer link between environmental issues and space technology and focusing on more effective legal means of enabling all peoples to benefit directly from space technology. The globalization of the problems facing today's world, which also had to deal with the emergence of a so-called "new order", was a political and legislative challenge that must be taken up.

35. Although the main purpose of space law was to take account of the aspirations of all peoples, irrespective of their degree of economic or scientific development, its basic rules had to reflect more fully the rights of all to achieve minimum levels of well-being and development, in accordance with the United Nations Charter and the general principles of international law referred to in article III of the 1967 Outer Space Treaty.

36. Some years previously, the member countries of the Group of 77 had seen that it would be necessary to put into practice the relevant principles of space law in order to build a more just and equitable world society. Equity had been and continued to be the cardinal point on the basis of which that group of countries had negotiated, for example, with a view to the adoption of

a new item for inclusion in the Legal Subcommittee's agenda. The other members of the Committee on the Peaceful Uses of Outer Space had then helped achieve a consenus on that item, which was entitled "Outer space benefits", on the understanding that equity would be the basis for negotiations on more specific legislation.

37. His delegation's understanding had been that all countries wanted to continue to develop rules which would ensure the progressive development of space law, particularly in areas of vital importance to mankind. At present, in view of new circumstances and a radically different international scenario that was increasingly characterized by the universality of problems, there was clearly a consensus on the need to regulate aspects which affected mankind and made it possible to formulate new legal principles consistent with the new world order.

38. Particular efforts had to be made to work out legal definitions that would allow more equitable access to all benefits resulting from the exploration and utilization of outer space. In that context, the Subcommittee's aim should be to arrive at a legal definition of the word "equitable", which did not necessarily imply equality, but meant different treatment for different things and was intended to remedy injustices and imbalances. That interpretation was reflected in the working paper submitted by a group of developing countries (A/AC.105/C.2/L.182) and contained in annex IV, section B, of the Subcommittee's report on its thirtieth session.

39. The working paper's main theme was that, in order to be genuinely effective, international cooperation had to be based on special treatment for developing countries. It would be a valuable contribution to a serious debate that would lead to the adoption of new legal rules whose frame of reference would be article I of the 1967 Outer Space Treaty. That article had given the agenda item on outer space benefits its legal and political content, except that the item included the words: "taking into particular account the needs of developing countries", which clearly reflected the political will of all countries to make space legislation an increasingly important component of international cooperation.

40. It should nevertheless be recognized that, while the concept of the common heritage of mankind was all too clear, the obligation of States to share the benefits of the exploration and utilization of outer space was not and it would still require further refinement in order to determine the nature and extent of what was to be shared.

41. Chile had been working together with other States to arrive at a clearer definition of the concept that would serve as a basis for international cooperation guaranteeing peace and justice and higher standards of living for all peoples. It was thus convinced that space technology was the most effective means of preventing environmental problems and helping to find new natural resources. That could be achieved only through new legal rules such as those proposed in document A/AC.105/C.2/L.182 or in the working paper submitted by the Group of 77 in 1987 (document A/AC.105/C.2/L.162, as contained in annex III, section C.4, of document A/AC.105/385). Paragraph 5 of that working paper thus stated that the Group of 77 considered it essential to study the question of access by States to the benefits of space activities

in various areas of applications of space science and technology; to define concepts such as "benefits" and "interests", as referred to in space law; and to analyse mechanisms and means for the equitable distribution of the benefits of the exploration and use of outer space.

42. In order to ensure minimum consistency with the amended version of article I of the 1967 Outer Space Treaty, which provided the title and wording of the new agenda item, more effective legal solutions would have to be found so that all peoples might exercise the rights to which they were entitled in a world dominated by globality and increasing and irreversible interdependence.

43. The relevant provisions of the 1967 Outer Space treaty conveyed the idea that, although the developing countries lacked technological capabilities, they should have access to the results of space exploration. Their technological capabilities had to be enhanced so that they could benefit from and conduct such activities. However, the 1967 Outer Space Treaty did not contain a specific provision reflecting that view. The Subcommittee therefore had an enormous legislative task before it, not only because of the principles and peremptory norms of international law and the rules of space legislation, but also because of the urgent need to help build international relations based on justice, peace and equity and the obligation to ensure that the new areas of international law were characterized by genuine cooperation, for cooperation was the only way of creating the stability and confidence needed to solve the problems affecting mankind as a whole.

44. Chile was thus proposing that the scope and content of the relevant rules of space law should be carefully analysed in order to determine how those rules applied to developing countries.

The meeting rose at 11.55 a.m.